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From: Ann Marie Cannoni, Reg. No. 35,972

Total Number of Pages: 126 (including Information Sheet)

Date Transmitted: October 21, 2008

Applicants: Harry R. Davis et al.  
Patent No. 7,417,039; Docket No. CV01382K US  
Webb File: 4686-045584  
Title: "Use of Substituted Azetidinone Compounds for the  
Treatment of Sitosterolemia"

Attachments: Fee Transmittal (1 p) and Request for Reconsideration of  
Patent Term Adjustment After Issuance Under 37 C.F.R.  
§1.705(d) (124 pp).

If you do not receive all pages, please call back as soon as possible. The number is (412) 471-8815.

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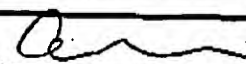
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Effective on 12/03/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). <b>FEE TRANSMITTAL</b> <b>For FY 2009</b>		Complete if Known	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	10/057.629
		Filing Date	1/25/2002
		First Named Inventor	Harry R. Davis
		Examiner Name	San-Ming R. Hui
		Art Unit	1617
TOTAL AMOUNT OF PAYMENT (\$ 200.00		Attorney Docket	4686 - 045584 (CV01382K US)

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<input checked="" type="checkbox"/> Deposit Account   Deposit Account Number: <u>23-0650</u> Deposit Account Name: <u>The Webb Law Firm</u>	
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)	
<input checked="" type="checkbox"/> Charge fee(s) indicated below <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee	
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 <input checked="" type="checkbox"/> Credit any overpayments	
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<b>FEE CALCULATION</b> (All the fees below are due upon filing or may be subject to a surcharge.)							
<b>1. BASIC FILING, SEARCH, AND EXAMINATION FEES</b>							
	FILING FEES		SEARCH FEES		EXAMINATION FEES		
	Small Entity		Small Entity		Small Entity		
<u>Application Type</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fees Paid (\$)</u>
Utility	330	82	540	270	220	110	_____
Design	220	110	100	50	140	70	_____
Plant	220	110	330	165	170	85	_____
Reissue	330	165	540	270	650	325	_____
Provisional	220	110	0	0	0	0	_____
<b>2. EXCESS CLAIM FEES</b>							
<u>Fee Description</u>							<u>Small Entity</u>
Each claim over 20 (including Reissues)							<u>Fee (\$)</u> <u>Fee (\$)</u>
Each independent claim over 3 (including Reissues)							52   26
Multiple dependent claims							220   110
Total Claims - 20 or HP   Extra Claims   Fee (\$)							390   195
HP - highest number of total claims paid for, if greater than 20.							<u>Multiple Dependent Claims</u>
Indep. Claims - 3 or HP   Extra Claims   Fee (\$)							<u>Fee (\$)</u> <u>Fee Paid (\$)</u>
HP - highest number of independent claims paid for, if greater than 3.							_____
<b>3. APPLICATION SIZE FEE</b>							
If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(e).							
<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>				<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
_____ - 100 -	_____ / 50 -	(round up to a whole number)				x _____ =	_____
<b>4. OTHER FEE(S)</b>							
Non-English Specification, \$130 fee (no small entity discount)							<u>Fees Paid (\$)</u>
Other (e.g., late filing surcharge): Patent Term Adjustment Fee							_____
							\$200.00

<b>SUBMITTED BY</b>			
Signature		Registration No.	35,972
Name (Print/Type)	Ann Marie Cannoni	Telephone	412-471-8815
		Date	October 21, 2008

Request for Reconsideration of Patent Term Adjustment  
 Under 37 C.F.R. §1.705(d)  
 U.S. Patent No. 7,417,039  
 Paper Dated: October 21, 2008  
 Attorney Docket No. CV01382K US (4686-045584)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent of Harry R. Davis et al.	:	Confirmation No.: 2175
U.S. Patent No. 7,417,039	:	Issued: August 26, 2008
Filed: January 25, 2002	:	Art Unit: 1617
Title: Use of Substituted Azetidinone Compounds for the Treatment of Sitosterolemia	:	Examiner: San-Ming R. Hui
Customer No.: 28289	:	

**VIA FACSIMILE: 571-273-8300**

**Mail Stop Petition**

**Commissioner for Patents**

**PO Box 1450**

**Alexandria, VA 22313-1450**

**REQUEST FOR RECONSIDERATION OF PATENT  
 TERM ADJUSTMENT AFTER ISSUANCE UNDER 37 C.F.R. §1.705(d)**

Applicants respectfully request reconsideration of the patent term adjustment determination for U.S. Patent No. 7,417,039 (indicated on the face of the patent and in the U.S. Patent and Trademark Office (USPTO) PAIR database as 1159 days) and request that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 1259 days.

U.S. Patent No. 7,417,039 issued on August 26, 2008. Accordingly, the present Request for Reconsideration is timely filed within two months of the issue date of the above-identified patent. Any deficiency or overpayment should be charged or credited to deposit account number 23-0650.

I hereby certify that this correspondence is being sent via facsimile to 571-273-8300 to: Mail Stop Petition, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
Melissa A. Wyke	01 FC:1455
(Name of Person Mailing Paper)	
<i>Melissa A. Wyke</i>	10/21/2008
Signature	Date

FCHOMP1 00000001 230650 10057629

200.00 DA

OW0469.DOC

Request for Reconsideration of Patent Term Adjustment  
Under 37 C.F.R. §1.705(d)  
U.S. Patent No. 7,417,039  
Paper Dated: October 21, 2008  
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**I. Statement of the Facts**

U.S. Patent No. 7,417,039 was granted on August 26, 2008 from U.S. Patent Application No. 10/057,629 (hereinafter the "'629 Application'"), filed on January 25, 2002. The Determination of Patent Term Adjustment under 35 U.S.C. §154(b) specifies that the patent term adjustment is 1159 days, subject to any disclaimer.

**A. Correct Patent Term Adjustment**

Applicants respectfully request that this determination of the patent term adjustment be reconsidered and revised. Applicants have analyzed the prosecution history of the '629 Application and respectfully assert that the correct patent term adjustment should be 1259 days, not 1159 days.

To facilitate review of the patent term adjustment, Applicants have attached a printout of the USPTO's Patent Term Adjustment History for the '629 application obtained from the USPTO website as Exhibit A.

Also, Applicants have attached a copy of a printout of a computerized summary of the prosecution history of the '629 Application compiled using the Patentterm® Online software as Exhibit B. Exhibit B is a list of events that occurred during the prosecution of the '629 Application.

Also, Applicants have attached as Exhibit C a copy of an annotated printout of each of the prosecution history events listed in Exhibit B. Exhibit C sets forth the date and name of each event, a convenient summary of the USPTO rule under which the significance of the event was analyzed with respect to patent term adjustment ("Rule Invoked"), and the date and name of the subsequent related event which concludes the analysis under the pertinent rule ("Related Event"). This analysis was conducted using the Patentterm® Online software.

For convenience in the discussion to follow, Applicants have attached as Exhibit D a copy of an AIPA Term Calculation Report that provides a summary of the patent term adjustment analysis and sets forth the relevant events of the prosecution history and analysis of each relevant event with respect to excluded days, debit days and credit days. The AIPA Term



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Calculation Calendar (attached as Exhibit E) provides a day-by-day review of the relevant events included in Exhibit D.

## **II. Analysis**

The patent term adjustment under 35 U.S.C. §154(b) for U.S. Patent No. 7,417,039 is currently 1159 days, as listed on the face of the patent and in the USPTO's Patent Term Adjustment History (see Exhibit A). The determination of 1159 days is in error, in that pursuant to 35 U.S.C. §154(b) the USPTO failed to issue a patent within three years of the actual filing date of the above-identified patent application in accordance with 37 C.F.R. §1.702(b) and failed to take certain action within the time frame specified in 37 C.F.R. §1.702(a).

Applicants will now discuss and analyze each of the pertinent events of the prosecution history to show the basis for Applicants' assertion that the correct patent term adjustment should be 1259 days, making reference to Exhibits A and D.

### **A. Bases Under §§1.702 and 1.703 for Adjustment**

Pursuant to 37 CFR §1.703(b), Applicants are entitled to a period of patent term adjustment due to failure of the USPTO to issue a patent within three years after the date the corresponding application was filed, i.e., by January 25, 2005 (hereinafter "Three Year Delay"). Since the Office failed to issue the above-identified patent until August 26, 2008, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 3 years after the filing date of the application, i.e., January 26, 2005 and ending on the date the patent issued, i.e., August 26, 2008. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 1309 days. This period of adjustment is in agreement with the period of Office delay used by the Office in calculating the patent term adjustment for the above-identified patent in Exhibit A (USPTO's Patent Term Adjustment History).

The Three Year Delay period does not include any time consumed by review of the Board of Patent Appeals and Interferences ("BPAI"). 37 C.F.R. §1.702(b)(4). Thus, the period of adjustment does not include the number of days in the period beginning on the date on which a notice of appeal to the BPAI was filed (i.e., May 9, 2005) and ending on the date of the

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last decision by the BPAI (i.e., February 28, 2007), which is a total of 661 days. See 37 C.F.R. §1.703(b)(4).

Referring now to Exhibit A, the USPTO Patent Term Adjustment History, please note that the USPTO used the mailing date of the decision (March 1, 2007), rather than the date that the decision was issued (February 28, 2007), as the date to calculate the time period for BPAI review. This yielded a total of 662 days. This calculation is incorrect, as acknowledged in the Decision on Application for Patent Term Adjustment mailed July 21, 2008 at pp. 2-3 (copy attached as Exhibit F). Referring to Exhibit A, the USPTO did not fix this entry in the patent term adjustment history (which still shows 662 days), but made a post-calculation adjustment of minus one (-1) day in the Patent Term Adjustment summary section.

The Decision on Application for Patent Term Adjustment did not include any time period calculation under 37 C.F.R. §1.702(b) for failing to issue U.S. Patent No. 7,417,039 within three years after the filing date of the application, since the issuance date was not known at that time. When the final post-issuance calculation was performed, it appears that this incorrect number (662 days) was used to calculate the period, rather than 661 days.

Under 37 C.F.R. §1.702(e), Applicants are entitled to a credit for successful appellate review. This period begins on the date that the notice of appeal to the BPAI was filed (i.e., May 9, 2005) and ending on the date of the last decision by the BPAI (i.e., February 28, 2007), which is a total of 661 days.

Accordingly, the Three Year Delay period is 1309 days minus 661 days exclusion for appellate review plus 661 days credit for successful appellate review equals 1309 days.

In addition to the patent term adjustment due to Three Year Delay, pursuant to 37 CFR §1.703(a), Applicants respectfully submit that they are also entitled to a period of patent term adjustment under §1.702(a) (hereinafter "Examination Delay") which is the sum of the following periods of delay:

(1) A period of delay of 99 days due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the actual filing date (i.e., by March 25, 2003) (hereinafter "14 Month Delay"). As the Office failed to mail an action under 35 U.S.C. §132 until July 2, 2003, Applicants are entitled to a period of patent term adjustment beginning

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on the day after the date that is 14 months after the date on which the '629 application was filed under 35 U.S.C. §111(a), i.e., March 26, 2003, and ending on the date of mailing of an action under 35 U.S.C. §132, i.e., July 2, 2003. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 99 days, which is in agreement with the period calculated by the Office (see Exhibit A); and

(2) A period of delay of 215 days due to the failure by the Office to issue U.S. Patent No. 7,417,039 within four months after the date the issue fee was paid (hereinafter "4 Month Issue Delay"). The issue fee was paid on September 24, 2007. Since the Office failed to issue the above-identified patent until August 26, 2008, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 4 months after the date on which the issue fee was paid, i.e., January 25, 2008, and ending on the issue date of the patent, i.e., August 26, 2008. Therefore, the period of patent term adjustment due to the 4 Month Delay by the Office is 215 days, which is in agreement with the period calculated by the Office (see Exhibit A);

Accordingly, as the Office has concluded (see Exhibit A), Applicants are entitled to a total period of Examination delay of 314 days, which is the sum of the period of 14 Month Delay (99 days), and the period of 4 Month Issue Delay (215 days).

As set forth in 37 CFR §1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 (hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the '629 application, the total period of Office Delay is the sum of the period of Three Years Delay (1309 days) and the period of Examination Delay (314 days) *to the extent these periods of delay are not overlapping.*

Applicants note that the 215 day period of 4 Month Issue Delay (January 25, 2008 to August 26, 2008) overlaps with the Three Year Delay period (January 26, 2005 to August 26, 2008). Applicants enclose a timeline which clearly illustrates this overlap as Exhibit G.

However, as the period of 14 Month Delay ended on July 2, 2003, prior to the first day of the period of Three Years Delay, i.e., January 26, 2005, Applicants submit that these

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periods are not overlapping. A copy of the recent D.C. Dist. Ct. decision *Wyeth et al. v. Dudas*, Civil Action No. 07-1492 (JR) (September 30, 2008) is attached hereto as Exhibit H. In *Wyeth*, the Court granted summary judgment to plaintiffs Wyeth et al., agreeing with Wyeth et al.'s interpretation that the time period for overlap in 35 U.S.C. §154(b)(2)(A) begins when the USPTO has failed to issue a patent within three years, not before.

According to 35 U.S.C. §154(b)(2)(A), "[t]o the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed."

35 U.S.C. §154(b)(1)(A) provides a one-day extension of patent term for every day that issuance of a patent is delayed by a failure of the USPTO to comply with various statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like. Periods of delay that fit under this provision are called "A delays" or "A periods."

35 U.S.C. §154(b)(1)(B) provides a "[g]uarantee of no more than 3-year application pendency." Under this provision, a one-day term extension is granted for every day of delay more than three years after the filing date that it takes for the patent to issue. Periods of delay that fit under this provision are called "B delays" or "B periods."

The extensions granted for A and B delays are subject to the following limitation: To the extent that periods of delay overlap, the period of any adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. 35 U.S.C. §154(b)(2)(A). This provision is intended to prevent double-counting of periods of delay.

The issue considered by the court in *Wyeth* was what it means for "periods of delay" to "overlap." The USPTO's view was that any administrative delay under §154(b)(1)(A) overlaps any 3-year maximum pendency delay under §154(b)(1)(B): the Applicant gets credit for "A delay" or for "B delay," whichever is larger, but never A + B. In other words, the B time period for overlap is assessed based upon the entire pendency of the application, rather than just the time period after three years from filing.

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The Court noted that the problem with the USPTO's construction is that it considers the application delayed under §154(b)(1)(B) during the period before it has been delayed. The Court decided that "B delay" begins when the PTO has failed to issue a patent within three years, not before.

Therefore, since the period of 14 Month Delay for the '629 Application ended on July 2, 2003, prior to the first day of the period of Three Years Delay, i.e., January 26, 2005, Applicants submit that these periods are not overlapping and the 99 days of 14 Month Delay should be treated as a credit.

Accordingly, Applicants submit that the total period of Office Delay is 1408 credit days, which is the sum of the period of Three Year Delay (1309 days) and the period of Examination Delay (314 days), reduced by the period of overlap (215 days), which totals 1408 days.

**B. Bases Under §1.704 for Adjustment**

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay. For the '629 Application, the Applicant Delay is determined as follows:

(a) The period of adjustment (credit days) is reduced for any period in excess of three months taken to reply to a USPTO notice or action (3-Month Applicant Response). 37 CFR §1.704(b). A Restriction Requirement was mailed on July 2, 2003. The 3-Month Applicant's Response period begins on the day after the date that is 3 months after the date of mailing of the Office Communication, i.e., October 3, 2003, and ends on the date that the reply was filed, i.e., November 21, 2003, which totals 50 days;

(b) The period of adjustment (credit days) is reduced for any period in which Applicant submits a reply having an omission to the extent that the periods do not overlap. 37 CFR §§1.704(b) and 1.704(c)(7). The period begins on the day after the date the reply having an omission was filed, i.e., August 5, 2003, and ends on the date that the reply or other paper correcting the omission was filed, i.e., November 21, 2003, which totals 109 days. This period overlaps in part with the period calculated above for the delay in 3-Month Applicant Response, therefore only the 109 day period is counted, not the 50 day period;

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(c) The period of adjustment (credit days) is reduced for any period in which Applicant submits a supplemental reply or other paper, not expressly requested by the examiner, after a reply has been filed. 37 CFR §§1.704(c)(8). The period begins on the day after the date the initial reply paper was filed, i.e., November 22, 2003, and ending on the date that the supplemental reply was filed, i.e., December 1, 2003, which is a total of 10 days;

(d) The period of adjustment (credit days) is reduced for any period in excess of three months taken to reply to a USPTO notice or action (3-Month Applicant Response). 37 CFR §1.704(b). A non-final Office Action was mailed on March 15, 2004. The 3-Month Applicant's Response period begins on the day after the date that is 3 months after the date of mailing of the Office Communication, i.e., June 16, 2004, and ends on the date that the reply was filed, i.e., July 14, 2004, which totals 29 days; and

(e) The period of adjustment (credit days) is reduced for any period in excess of three months taken to reply to a USPTO notice or action (3-Month Applicant Response). 37 CFR §1.704(b). A final Office Action was mailed on February 8, 2005. The 3-Month Applicant Response period begins on the day after the date that is 3 months after the date of mailing of the Office Communication, i.e., May 9, 2005, and ends on the date that the reply was filed, i.e., May 9, 2005, which totals 1 day.

Thus, the total Applicant Delay is the sum of  $109+10+29+1 = 149$  days. This agrees with the USPTO determination as shown in Exhibit A.

#### C. Terminal Disclaimer

The '629 Application is not subject to any terminal disclaimer.

### III. Period of adjustment determined according to 37 C.F.R. §1.703(f)

According to 37 C.F.R. §1.703(f), the period of adjustment shall be the sum of the periods calculated under 37 C.F.R. §1.703(a) through (e), to the extent that such periods are not overlapping, less the sum of the periods calculated under 37 C.F.R. §1.704. The sum of the periods calculated under 37 C.F.R. §1.703(a) through (e) is equal to 1408 days. The sum of the periods calculated under 37 C.F.R. §1.704 is equal to 149 days. The net patent term adjustment under 37 C.F.R. §1.703(f) is equal to 1408 days minus 149 days, i.e., 1259 days.


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In view of the foregoing, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 1259 days.

Respectfully submitted,  
THE WEBB LAW FIRM

Date: October 21, 2008

By

  
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## **EXHIBIT A**



10057,629

## USE OF SUBSTITUTED AZETIDINONE COMPOUNDS FOR THE TREATMENT OF SITOSTEROLEMIA 09-18-2008::14:30:17

## Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/057,629

Filing or 371(c) Date:

01-25-2002

Issue Date of Patent:

08-26-2008

Pre-Issue Petitions (days):

+0

Post-Issue Petitions (days):

+0

USPTO Adjustment(days):

-1

USPTO Delay (PTO) Delay (days):

Three Years:

Applicant Delay (APPL) Delay (days):

Total PTA (days):

Explanation Of Calculations

1309

149

1159

## Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
08-06-2008	PTA 36 Months	333	
08-26-2008	Patent Issue Date Used in PTA Calculation	215	
07-24-2008	Dispatch to FDC		
07-24-2008	TC Return to Pubs		
07-21-2008	Mail-Record a Petition Decision of Granted for Patent Term Adjustment after Allowance		
07-21-2008	Record a Petition Decision of Granted for Patent Term Adjustment after Allowance		
07-21-2008	Record a Petition Decision of Granted for Patent Term Adjustment after Allowance		
07-20-2008	Adjustment of PTA Calculation by PTO		
07-20-2008	Adjustment of PTA Calculation by PTO		
08-30-2007	Pubs Case Remand to TC		
09-25-2007	Application Is Considered Ready for Issue		
09-24-2007	Issue Fee Payment Verified		
09-24-2007	Issue Fee Payment Verified		
09-24-2007	Issue Fee Payment Received		
08-30-2007	Petition Entered		
06-25-2007	Mail Notice of Allowance		
06-21-2007	Document Verification		
06-13-2007	Notice of Allowance Data Verification Completed		

06-13-2007	Case Docketed to Examiner in GAU
09-29-2006	Information Disclosure Statement considered
03-01-2007	Mail BPAI Decision on Appeal - Reversed
02-28-2007	BPAI Decision - Examiner Reversed
09-29-2006	Information Disclosure Statement (IDS) Filed
09-29-2005	Information Disclosure Statement (IDS) Filed
09-09-2006	Assignment of Appeal Number
08-23-2006	Appeal Awaiting BPAI Docketing
08-10-2006	Mail Miscellaneous Communication to Applicant
08-07-2006	Miscellaneous Communication to Applicant - No Action Count
05-03-2006	Order Returning Undocketed Appeal to the Examiner
04-11-2006	Appeal Awaiting BPAI Docketing
08-30-2005	Mail Examiner's Answer
08-22-2005	Examiner's Answer to Appeal Brief
08-16-2005	Mail Miscellaneous Communication to Applicant
08-15-2005	Miscellaneous Communication to Applicant - No Action Count
06-09-2005	Date Forwarded to Examiner
06-06-2005	Appeal Brief Filed
05-20-2005	Mail Advisory Action (PTOL - 303)
05-18-2005	Advisory Action (PTOL-303)
05-10-2005	Information Disclosure Statement (IDS) Filed
05-10-2005	Information Disclosure Statement (IDS) Filed
05-09-2005	Notice of Appeal Filed
04-14-2005	Date Forwarded to Examiner
04-08-2005	Amendment after Final Rejection
04-08-2005	Information Disclosure Statement (IDS) Filed
04-08-2005	Information Disclosure Statement (IDS) Filed
02-08-2005	Mail Final Rejection (PTOL - 326)
02-07-2005	Final Rejection
11-23-2004	Date Forwarded to Examiner

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11-17-2004	Response after Non-Final Action	
10-20-2004	Mail Non-Final Rejection	
10-18-2004	Non-Final Rejection	
07-14-2004	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	
07-14-2004	Oath or Declaration Filed (Including Supplemental)	
08-03-2004	Date Forwarded to Examiner	
07-14-2004	Response after Non-Final Action	
07-14-2004	Request for Extension of Time - Granted	
07-14-2004	Workflow incoming petition IFW	
07-14-2004	Workflow incoming amendment IFW	
03-15-2004	Mail Non-Final Rejection	
03-03-2004	Non-Final Rejection	
12-01-2003	Reference capture on IDS	
12-01-2003	Information Disclosure Statement (IDS) Filed	10
12-01-2003	Information Disclosure Statement (IDS) Filed	
01-14-2004	Case Docketed to Examiner in GAU	
12-09-2003	IFW Amended case processing Complete	
12-09-2003	Date Forwarded to Examiner	
11-21-2003	Response to Election / Restriction Filed	
10-31-2003	Reference capture on IDS	109
10-31-2003	Information Disclosure Statement (IDS) Filed	
10-31-2003	Information Disclosure Statement (IDS) Filed	
10-21-2003	Mail Notice of Informal or Non-Responsive Amendment	
08-13-2003	Date Forwarded to Examiner	
08-04-2003	Informal or Non-Responsive Amendment after Examiner Action	
08-04-2003	Response to Election / Restriction Filed	
07-02-2003	Mail Restriction Requirement	
06-30-2003	Requirement for Restriction / Election	
06-09-2003	Information Disclosure Statement (IDS) Filed	
06-09-2003	Information Disclosure Statement (IDS) Filed	

05-16-2003	Information Disclosure Statement (IDS) Filed
05-16-2003	Information Disclosure Statement (IDS) Filed
05-05-2003	Information Disclosure Statement (IDS) Filed
05-05-2003	Information Disclosure Statement (IDS) Filed
04-14-2003	Information Disclosure Statement (IDS) Filed
04-14-2003	Information Disclosure Statement (IDS) Filed
01-13-2003	Information Disclosure Statement (IDS) Filed
01-13-2003	Information Disclosure Statement (IDS) Filed
08-23-2002	Information Disclosure Statement (IDS) Filed
08-23-2002	Information Disclosure Statement (IDS) Filed
09-04-2002	Information Disclosure Statement (IDS) Filed
08-21-2002	Case Docketed to Examiner in GAU
08-21-2002	Information Disclosure Statement (IDS) Filed
02-25-2002	Information Disclosure Statement (IDS) Filed
02-20-2002	Application Dispatched from OIPE
02-06-2002	Application Is Now Complete
01-25-2002	IPW Scan & PACR Auto Security Review
	Initial Exam Team nn

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9/18/2008

## **EXHIBIT B**


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Docket Number: CV01382K US

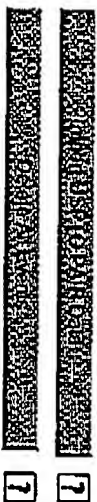
Line Item	Date (mm/dd/yyyy)	Event Title
1	01/25/2002	Earliest Referenced Application under 35 USC 120, 121, or 365(c)
2	01/25/2002	Filing Date under 35 USC 111(a) (US National Application)
3	08/21/2002	Information Disclosure Statement Comments: IDSs electronically filed: EFS 17233 and 17262 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
4	08/23/2002	Information Disclosure Statement Comments: IDSs electronically filed: EFS 17325, 17349, 17350, 17351 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
5	01/13/2003	Information Disclosure Statement Comments: IDS mailed 1/8/03; rec'd 1/13/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
6	04/14/2003	Information Disclosure Statement Comments: IDS mailed 4/4/03; rec'd 4/14/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
7	05/05/2003	Information Disclosure Statement Comments: IDS mailed 4/28/03; rec'd 5/5/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
8	05/16/2003	Information Disclosure Statement Comments: IDS mailed 5/14/03; rec'd 5/16/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".

9	06/09/2003	Information Disclosure Statement Comments: IDS mailed 6/5/03; rec'd 6/9/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
10	07/02/2003	Restriction / Election-of-Species Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Requirement for Restriction / Election".
11	08/04/2003	Response to Election-of-Species / Restriction Filed Comments: mailed 8/1/03; rec'd 8/4/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response to Election / Restriction Filed".
12	10/21/2003	Notice of Informal or Non-Responsive Amendment Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Mail Notice of Informal or Non-Responsive Amendment".
13	10/31/2003	Information Disclosure Statement Comments: IDS mailed 10/28/03; rec'd 10/31/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
14	11/21/2003	Response to Election-of-Species / Restriction Filed Comments: mailed 11/18/03; rec'd 11/21/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response to Election / Restriction Filed".
15	12/01/2003	Information Disclosure Statement Comments: IDS mailed 11/26/03; rec'd 12/01/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
16	03/15/2004	Non-final Action Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Non-Final Rejection".
17	07/14/2004	Affidavit(s), Declaration(s), or Exhibit(s) Received Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received".
18	07/14/2004	Reply after Non-final Action under 37 CFR 1.111 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response after Non-Final Action".
19	10/20/2004	Non-final Action Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Non-Final Rejection".

○	20	11/17/2004	Reply after Non-final Action under 37 CFR 1.111 Comments: mailed 11/15/04; rec'd 11/17/04 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response after Non-Final Action".
○	21	02/08/2005	Final Rejection Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Final Rejection".
○	22	04/08/2005	Information Disclosure Statement Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
○	23	04/08/2005	Amendment after Final Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Amendment after Final Rejection".
○	24	05/09/2005	Notice of Appeal to Board of Patent Appeal and Interferences Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Notice of Appeal Filed".
○	25	05/10/2005	Information Disclosure Statement Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".
○	26	05/20/2005	Advisory Action after Final Rejection Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Advisory Action (PTOL-303)".
○	27	06/06/2005	Appeal Brief by Applicant Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Appeal Brief Filed".
○	28	08/16/2005	Miscellaneous PTO Communication to Applicant Comments: IDSs of 12/1/03 and 10/31/03 were considered Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Miscellaneous Communication to Applicant - No Action Count".
○	29	08/30/2005	Examiner's Answer to Appeal Brief Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Examiner's Answer to Appeal Brief".
○	30	05/03/2006	Miscellaneous PTO Action or Notice Comments: Order Returning Undocketed Appeal to Examiner to consider declaration Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Order Returning Undocketed Appeal to the Examiner".
○	31	08/10/2006	Miscellaneous PTO Communication to Applicant Comments: Comm from Examiner: Declaration had been considered



<input type="radio"/>			<i>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Miscellaneous Communication to Applicant - No Action Count".</i>
<input type="radio"/>	32	09/29/2006	Information Disclosure Statement Comments: IDS mailed 9/22/06; rec'd 9/29/06 <i>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".</i>
<input type="radio"/>	33	02/28/2007	Final Decision by Board of Patent Appeals and Interferences Comments: PAIR indicates decision mailed on 3/1/07, however document indicates it was mailed on 2/28/07. Spoke to paralegal at Board who said it was mailed on 3/1/07. However, decision on PTA stated that this date should be 2/28/07. <i>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "BPAI Decision - Examiner Reversed".</i>
<input type="radio"/>	34	06/25/2007	Notice of Allowance under 35 USC 151 <i>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Mail Notice of Allowance".</i>
<input type="radio"/>	35	09/24/2007	Issue Fee Payment under 35 USC 151
<input type="radio"/>	36	08/26/2008	Issue Date
			 <b>CLICK to add a new history event</b>



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## **EXHIBIT C**



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Docket Number: CV01382K US

Line Item	Date	Event	Rule Invoked	Related Event
1	01/25/2002	Earliest Referenced Application under 35 USC 120, 121, or 365(c)		
2	01/25/2002	Filing Date under 35 USC 111(a) (US National Application)	<p><b>14-Month PTO First Action</b></p> <p>PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).</p> <p>[1] The PTO interprets this rule as requiring that a notification be mailed. See 37 CFR 1.702(a)(1). Therefore, if this is an oral restriction requirement, it may not be the correct first PTO action.</p> <p><b>3-Year PTO Issue of Patent</b></p> <p>PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(d), 1.703(d).</p> <p><b>PTO Exclusion Interpretation</b></p> <p><b>37 CFR 1.703(d) "Actual Delay" Limitation</b></p> <p><b>Do Not Analyze this Rule</b></p>	<p>Select First PTO Action: 10. Restriction / Election-of-Species</p> <p>Select Issue Date: 36. Issue Date</p>
		Information Disclosure Statement		

○ 3	08/21/2002	Comments: IDSs electronically filed: EFS 17233 and 17262  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
○ 4	08/23/2002	Information Disclosure Statement  Comments: IDSs electronically filed: EFS 17325; 17349; 17350; 17351  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
○ 5	01/13/2003	Information Disclosure Statement  Comments: IDS mailed 1/6/03; rec'd 1/13/03  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
○ 6	04/14/2003	Information Disclosure Statement  Comments: IDS mailed 4/4/03; rec'd 4/14/03  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
○ 7	05/05/2003	Information Disclosure Statement  Comments: IDS mailed 4/28/03; rec'd 5/5/03  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
		Information Disclosure Statement  Comments: IDS mailed 5/14/03; rec'd 5/16/03		

<input type="radio"/>	8	05/16/2003	Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
<input type="radio"/>	9	06/09/2003	Information Disclosure Statement Comments: IDS mailed 6/5/03; rec'd 6/9/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".		
<input type="radio"/>	10	07/02/2003	Restriction / Election-of-Species Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Requirement for Restriction / Election".	<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.204(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.205(c).  <b>§ 1.205(c) Showing of Due Care</b>	Select Applicant Response: 14. Response to Election-of-Species / Restriction Filed
<input type="radio"/>	11	08/04/2003	Response to Election-of-Species / Restriction Filed Comments: mailed 8/1/03; rec'd 8/4/03 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response to Election / Restriction Filed".	<b>Reply Having Omission</b>  Period of adjustment (credits) shall be reduced where applicant submits a reply having an omission (37 CFR 1.135(c)), for the period beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. 37 CFR 1.204 (c)(12).  The USPTO interprets this rule as not limited to Office actions under 37 CFR 1.135(c), but it applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected. See MPEP 2732 at 2700-20 (8th ed., rev. 2, May 2004).  <b>(1) Carefully check that any associated PTO Notices or Actions (and associated applicant responses) have the proper rule assignments and closing events. This is a common source of PTA error.</b>	Select Reply/Other Paper Correcting Omission: 14. Response to Election-of-Species / Restriction Filed
			<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3		

	12	10/21/2003	<p>Notice of Informal or Non-Responsive Amendment</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Mail Notice of Informal or Non-Responsive Amendment".</p>	<p>months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p><b>1.705(c) Showing of Due Care</b></p> <p>[1] Carefully check that any associated PTO Notices or Actions (and associated applicant responses) have the proper rule assignments and closing events. This is a common source of PTA error.</p>	<p>Select Applicant Response: 14. Response to Election-of-Species / Restriction Filed</p>
	13	10/31/2003	<p>Information Disclosure Statement</p> <p>Comments: IDS mailed 10/29/03; rec'd 10/31/03</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".</p>		
	14	11/21/2003	<p>Response to Election-of-Species / Restriction Filed</p> <p>Comments: mailed 11/18/03; rec'd 11/21/03</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response to Election / Restriction Filed".</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(iii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).</p> <p>[1] Where the PTO is not required to respond to this response, application of this rule may be subject to varying interpretations, although it is typically applied by the PTO. Please ensure application of this rule is consistent with how you would like this case to be analyzed.</p>	<p>Select PTO Response: 16. Non-final Action</p>
	15	12/01/2003	<p>Information Disclosure Statement</p> <p>Comments: IDS mailed 11/26/03; rec'd 12/01/03</p>	<p><b>Supplemental Reply or Other Paper (IDS)</b></p> <p>Period of adjustment (credits) shall be reduced where applicant submits a supplemental reply or other paper, not expressly requested by the examiner, after a reply has been filed, for the period beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed. 37 CFR 1.704(c)(8).</p> <p>A paper containing only an IDS in compliance with 37 CFR 1.97 and 1.98 will not generate a reduction if accompanied by a statement that each item in the</p>	<p>Select Initial Reply:</p>

<input type="radio"/>			Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	IDS was filed in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than 30 days prior to the filing of the IDS. This 30 day period is not extendable. 37 CFR 1.704(d).	14. Response to Election of- Species / Restriction Filed
<input type="radio"/>	16	03/15/2004	Non-final Action Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Non-Final Rejection".	<input checked="" type="checkbox"/> 1.704(d) IDS Statement Included [1] Carefully check this IDS to determine if a statement under 37 CFR 1.704(d) is included. Indicate this using the checkbox above. <b>3-Month Applicant Response to Notice or Action</b> Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). <input checked="" type="checkbox"/> 1.705(c) Showing of Due Care	Select Applicant Response: 18. Reply after Non-final Action
<input type="radio"/>	17	07/14/2004	Affidavit(s), Declaration(s), or Exhibit(s) Received Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received".	--	
<input type="radio"/>	18	07/14/2004	Reply after Non-final Action under 37 CFR 1.111 Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response after Non-Final Action".	<b>4-Month PTO Response to Applicant Reply</b> PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3). <b>3-Month Applicant Response to Notice or Action</b> Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or	Select PTO Response: 19. Non-final Action
			Non-final Action		

<input type="radio"/>	19	10/20/2004	Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Non-Final Rejection".	shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154(d)(2)(C)(ii); 37 CFR 1.704(d).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(d)(3)(C); 37 CFR 1.705(c).  <u>§ 1.705(c)</u> Showing of Due Care	Select Applicant Response: 20. Reply after Non-Final Action
<input type="radio"/>	20	11/17/2004	Reply after Non-Final Action under 37 CFR 1.111  Comments: mailed 11/15/04; rec'd 11/17/04  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Response after Non-Final Action".	4-Month PTO Response to Applicant Reply  PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(d)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).	Select PTO Response: 21. Final Rejection
<input type="radio"/>	21	02/08/2005	Final Rejection  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Final Rejection".	3-Month Applicant Response to Notice of Action  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(d).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(d)(3)(C); 37 CFR 1.705(c).  <u>§ 1.705(c)</u> Showing of Due Care  [1] Determining the appropriate Applicant Response to a Final Rejection can, in some cases, be subject to varying interpretations. Please ensure the Applicant Response selected here is consistent with how you would like this rule to be analyzed.	Select Applicant Response: 24. Notice of Appeal to BPAI
<input type="radio"/>	22	04/08/2005	Information Disclosure Statement  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".	--	
<input type="radio"/>	23	04/08/2005	Amendment after Final  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Amendment after Final Rejection".	--	



			<p>Notice of Appeal to Board of Patent Appeal and Interferences</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Notice of Appeal Filed".</p>	<p><b>Exclusion for Appellate Review</b></p> <p>3-Year PTO Issue Requirement does not include the period of appellate review by the BPAT or a Federal court, beginning on the date on which a notice of appeal to the BPAT was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAT or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the BPAT. 35 USC 154(b)(1)(B)(iii); 37 CFR 1.702(d)(4), 1.703(b)(4).</p> <p><b>Credit for Successful Appellate Review</b></p> <p>Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAT was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAT or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145. 35 USC 154(b)(1)(C)(iii); 37 CFR 1.702(e), 1.703(e).</p> <p><input checked="" type="checkbox"/> Patent Issued under Appeal Decision Reversing an Adverse Determination of Patentability</p> <p>[1] Carefully check to determine whether this appeal was successful (patent was issued under an appeal decision reversing an adverse determination of patentability) as required under 35 USC 154(b)(1)(C)(iii), 37 CFR 1.702(e), 37 CFR 1.703(e), and other relevant authority. If this appeal was not successful, either delete this rule, or indicate the appeal was not successful by unchecking the box above.</p>	<p>Select Final Appellate Decision: 33. Final BPAT Decision</p>
	25	05/10/2005	<p>Information Disclosure Statement</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) Filed".</p>		
	26	05/20/2005	<p>Advisory Action after Final Rejection</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Advisory Action (PTOL-303)".</p>		
27	06/06/2005		<p>Appeal Brief by Applicant</p> <p>Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Appeal Brief Filed".</p>	<p><b>4-Month PTO Response to Appeal Brief</b></p> <p>PTO must respond to an appeal taken under 35 USC 134 not later than 4 months after the date on which the appeal was taken. The period of adjustment (credits) begins on the day after the date that is 4 months after the date an appeal brief in compliance with 37 CFR 41.37 was filed and ending on the date of mailing of any of an examiner's answer under 37 CFR 41.39, an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(iii); 37 CFR 1.702(a)(2), 1.703(a)(4).</p>	<p>Select PTO Response to Appeal Brief: 29. Examiner's Answer to Appeal Brief</p>

○ 28	08/16/2005	Miscellaneous PTO Communication to Applicant  Comments: IDSs of 12/1/03 and 10/31/03 were considered  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Miscellaneous Communication to Applicant - No Action Count".	--	
○ 29	08/30/2005	Examiner's Answer to Appeal Brief  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Examiner's Answer to Appeal Brief".	--	
○ 30	05/03/2006	Miscellaneous PTO Action or Notice  Comments: Order Returning Undocketed Appeal to Examiner to consider declaration  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Order Returning Undocketed Appeal to the Examiner".	--	
○ 31	08/10/2006	Miscellaneous PTO Communication to Applicant  Comments: Comm from Examiner: Declaration had been considered  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Miscellaneous Communication to Applicant - No Action Count".	--	
○ 32	09/29/2006	Information Disclosure Statement  Comments: IDS mailed 9/22/06; rec'd 9/29/06  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Information Disclosure Statement (IDS) filed".	--	
		Final Decision by Board of Patent Appeals and Interferences  Comments: PAIR indicates decision	4-Month PTO Response to Appellate Decision  PTO must act on an application not later than 4 months after the date of a decision by the BPAI under 35 USC 134 or 135 or a decision by a Federal court	

<input type="radio"/>	33	02/28/2007	mailed on 3/1/07, however document indicates it was mailed on 2/28/07. Spoke to paralegal at Board who said it was mailed on 3/1/07. However, decision on PTA stated that this date should be 2/28/07.  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "BPAI Decision - Examiner Reversed".	<input checked="" type="checkbox"/> Allowable Claim(s) Remain  under 35 USC 141, 145, or 146 where at least one allowable claim remains in the application. The period of adjustment (credits) begins on the day after the date that is 4 months after the date of the final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145 or 146 and ending on the date of mailing of either an action under 35 USC 132 or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(iii); 37 CFR 1.702(a)(3), 1.703(a)(5).	Select PTO Response to Decision: 34. Notice of Allowance
<input type="radio"/>	34	06/25/2007	Notice of Allowance under 35 USC 151  Imported from PAIR on 7/6/2007 9:19:39 AM. Original PAIR entry was "Mail Notice of Allowance".	<input checked="" type="checkbox"/> 3-Month Applicant Response to Notice of Action  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(iii); 37 CFR 1.704(d).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  <input checked="" type="checkbox"/> 1.705(c) Showing of Due Care	Select Applicant Response: 35. Issue Fee Payment
<input type="radio"/>	35	09/24/2007	Issue Fee Payment under 35 USC 151	<input checked="" type="checkbox"/> 4-Month PTO Issue of Patent  PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6).  <input type="checkbox"/> [ ] Verify that this rule is assigned to the last prosecution history event fulfilling all outstanding requirements (including issue fee payment) for issuance.	Select Issue Date: 36. Issue Date
<input type="radio"/>	36	08/26/2008	Issue Date		



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## **EXHIBIT D**



# ALPA Term Calculation Report

APPLICATION INFORMATION			
Docket Number:	CV01382K US	User Name:	Caunoni, Ann
Application Number:	10/057,629	Firm/Company Name:	Webb Law Firm
Filing Date:	01/25/2002	User Comments:	
Title/Inventor(s):		Calculation Generated:	09/18/2008 01:56:28 PM ET

APPLICATION INFORMATION SUMMARY			
Earliest Referenced Application under 35 USC § 120, 121, or 365(c):	01 / 25 / 2002		
Filing Date (US National Application):	01 / 25 / 2002		
Net Adjustment Credits:	1408 Days		
Net Adjustment Debits:	149 Days		
Patent Term Adjustment:	1259 Days		
ALPA Patent Term End Date:	07 / 07 / 2025 (1)		

(1) Assumes payment of all maintenance fees, no intervening acts, and no 35 USC 156 regulatory extensions. Terminal disclaimer(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 01/25/2022.

SUMMARY OF PATENT TERM ADJUSTMENTS			
Credit Days (USPTO Delay):	1309	1408	X
Debit Days (Applicant Delay):	149	149	Match
Total Patent Term Adjustment Days:	1159	1259	X

(2) Comparison is shown for USPTO Delay, Applicant Delay, and Total Patent Term Adjustment fields displayed on USPTO PAIR Patent Term Adjustments (PTA) tab on 09/08/2008. See the full PAIR PTA tab, file wrapper (e.g., Notice of Allowance, PTA-related petitions), and issued patent for complete information on USPTO-calculated PTA.

USPTO PATENT APPLICATION SUMMARY (B)					
Applicant	Applicant Address	Applicant Phone	Applicant Fax	Applicant Email	Applicant Website
Note: (b)(1) - Not to be used for public release.					
14-Month PTO First Action					
<b>A</b> Filing Date under 35 USC 111(a) (US National Application) 01/25/2002	PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).				99
3-Year PTO Issue of Patent					
<b>B</b> Filing Date under 35 USC 111(a) (US National Application) 01/25/2002	PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b).  You have elected to analyze this rule under the PTO Exclusion Interpretation.  You have elected to not consider the 37 CFR § 1.703(g) Actual Delay limitation in determining Credit Days under this rule.				648
3-Month Applicant Response to Notice of Action					
<b>C</b> 07/02/2003 Restriction / Election-of-Species	Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  You have indicated that no 1.705(c) Showing of Due Care was made.				50
Applicant Response: 11/21/2003 Response to Election-of-Species / Restriction Filed					

D	Reply Having Omission	Reply/Other Paper Correcting Omission: 11/21/2003 Response to Election-of-Species / Restriction Filed	109	
E	10/21/2003 Notice of Informal or Non-Responsive Amendment  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(e).  You have indicated that no 1.705(e) Showing of Due Care was made.	Applicant Response: 11/21/2003 Response to Election-of-Species / Restriction Filed	0	
F	11/21/2003 Response to Election-of-Species / Restriction Filed  PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).  4-Month PTO Response to Applicant Reply	PTO Response: 03/15/2004 Non-final Action		0

<p><b>12/01/2003</b> Information Disclosure Statement</p>	<p><b>Supplemental Reply or Other Paper (IDS)</b></p> <p>Period of adjustment (credits) shall be reduced where applicant submits a supplemental reply or other paper, not expressly requested by the examiner, after a reply has been filed, for the period beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed. 37 CFR 1.704(c)(8).</p> <p>A paper containing only an IDS in compliance with 37 CFR 1.97 and 1.98 will not generate a reduction if accompanied by a statement that each item in the IDS was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than 30 days prior to the filing of the IDS. This 30 day period is not extendable. 37 CFR 1.704(d).</p> <p>You have indicated that no statement under 37 CFR 1.704(d) was included with this IDS.</p>	<p><i>Initial Reply:</i> <b>11/21/2003</b> Response to Election-of-Species / Restriction Filed</p>	10	
<p><b>03/15/2004</b> Non-Final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> <b>07/14/2004</b> Reply after Non-Final Action under 37 CFR 1.111</p>	29	
<p><b>07/14/2004</b> Reply after Non-Final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(b)(2)(3).</p>	<p><i>PTO Response:</i> <b>10/20/2004</b> Non-Final Action</p>		0



<p>10/20/2004 Non-final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>11/17/2004 Reply after Non-final Action under 37 CFR 1.111</p>		0	
<p>11/17/2004 Reply after Non-final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(e) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(e)(2), 1.703(a)(2)(3).</p>	<p><i>PTO Response:</i></p> <p>02/08/2005 Final Rejection</p>			0
<p>02/08/2005 Final Rejection</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>		1	
<p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>	<p><b>Exclusion for Appellate Review</b></p> <p>3-Year PTO Issue Requirement does not include the period of appellate review by the BPAI or a Federal court, beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the BPAI. 35 USC 154(b)(1)(B)(ii); 37 CFR 1.702(b)(4), 1.703(b)(4).</p>	<p><i>Responsive Event:</i></p> <p>02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>	661		

<p><b>N</b></p> <p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>	<p><b>Credit for Successful Appellate Review</b></p> <p>Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, 35 USC 154(b)(1)(C)(iii); 37 CFR 1.702(e), 1.703(e).</p> <p>You have indicated the patent issued under an appeal decision reversing an adverse determination of patentability.</p>	<p><b>Final Appellate Decision:</b></p> <p>02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>		661
<p><b>O</b></p> <p>06/06/2005 Appel Brief by Applicant</p>	<p><b>4-Month PTO Response to Appeal Brief</b></p> <p>PTO must respond to an appeal taken under 35 USC 134 not later than 4 months after the date on which the appeal was taken. The period of adjustment (credits) begins on the day after the date that is 4 months after the date an appeal brief in compliance with 37 CFR 41.37 was filed and ending on the date of mailing of any of an examiner's answer under 37 CFR 41.39, an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(4).</p>	<p><b>PTO Response to Appeal Brief:</b></p> <p>08/30/2005 Examiner's Answer to Appeal Brief</p>		0
<p><b>P</b></p> <p>02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>	<p><b>4-Month PTO Response to Appellate Decision</b></p> <p>PTO must act on an application not later than 4 months after the date of a decision by the BPAI under 35 USC 134 or 135 or a decision by a Federal court under 35 USC 141, 145, or 146 where at least one allowable claim remains in the application. The period of adjustment (credits) begins on the day after the date that is 4 months after the date of the final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145 or 146 and ending on the date of mailing of either an action under 35 USC 132 or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(iii); 37 CFR 1.702(a)(3), 1.703(a)(5).</p> <p>You have indicated allowable claim(s) remain in the application.</p>	<p><b>PTO Response to Decision:</b></p> <p>06/25/2007 Notice of Allowance under 35 USC 151</p>		0
<p><b>Q</b></p> <p>06/25/2007 Notice of Allowance under 35 USC 151</p>	<p><b>3-Month Applicant Response to Notice of Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><b>Applicant Response:</b></p> <p>09/24/2007 Issue Fee Payment under 35 USC 151</p>	0	

4-Month PTO Issue of Patent				
R	09/24/2007 Issue Fee Payment under 35 USC 151	PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6).	Issue Date: 08/26/2008 Issue Date	
Total Exclusion, Debit, and Credit Days:		661	199	1623
Overlap Days (7):		0	50	215
Net Exclusion, Debit, and Credit Days:		661	149	1408
Patent Term Adjustment Days (8):				1259
(3) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updating the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their judgment and interpretation of applicable legal authority.				
(4) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Patent rule. See 35 USC 154(b)(1)(B)(i)-(iii); 37 CFR 1.702(b)(1)-(5), 1.703(b)(1)-(4).				
(5) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant Delay.				
(6) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPTO Delay.				
(7) To the extent credit periods overlap other credit periods, debit periods overlap other debit periods, or exclusion periods overlap other exclusion periods, overlaps are subtracted so that each calendar day generates at most one credit day, one debit day, and one exclusion day.				
(8) Patent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.				

## **EXHIBIT E**



JAN 21 2009						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25 US Filing Date	26	27
28	29	30	31			

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Mon	Tue	Wed	Thurs	Fri	Sat	Sun
			1 A	2 A	3 A	4 A
5 A	6 A	7 A	8 A	9 A	10 A	11 A
12 A	13 A	14 A	15 A	16 A	17 A	18 A
19 A	20 A	21 A	22 A	23 A	24 A	25 A
26 A	27 A	28 A	29 A	30 A	31 A	

Case No.		Case Name		Case No.		Case Name		Case No.		Case Name		Case No.		Case Name		Case No.		Case Name	
2	A	3	A	4	A	5	A	6	A	7	A	8	A	1	A	9	A	10	A
16	A	17	A	18	A	19	A	20	A	21	A	22	A	23	A	24	A	25	A
30	A																		

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The Webb Law Firm						
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

4 Response to Election of Species / Restriction Filed	5 D	6 D	7 D	8 D	9 D	10 D
11 D	12 D	13 D	14 D	15 D	16 D	17 D
18 D	19 D	20 D	21 D	22 D	23 D	24 D
25 D	26 D	27 D	28 D	29 D	30 D	31 D

JULY 2008						
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15	16	17	18	19	20	21
D	D	D	D	D	D	D
22	23	24	25	26	27	28
D	D	D	D	D	D	D
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D	D					

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		1	2	3	4	5
		D	3 Month Applicant Response Deadline D	C,D	C,D	C,D
6	7	8	9	10	11	12
C,D	C,D	C,D	C,D	C,D	C,D	C,D
13	14	15	16	17	18	19
C,D	C,D	C,D	C,D	C,D	C,D	C,D
20	21	22	23	24	25	26
C,D	Notice of Informal or Non-Responsive Amendment C,D	C,D	C,D	C,D	C,D	C,D
27	28	29	30	31		
C,D	C,D	C,D	C,D	C,D		

NOVEMBER 2008						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
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3 C,D	4 C,D	5 C,D	6 C,D	7 C,D	8 C,D	9 C,D
10 C,D	11 C,D	12 C,D	13 C,D	14 C,D	15 C,D	16 C,D
17 C,D	18 C,D	19 C,D	20 C,D	21 Response to Exclusion of Species / Restriction Filed C,D	22 G	23 G
24 G	25 G	26 G	27 G	28 G	29 G	30 G

OCTOBER 2008						
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15 *Non-final Action	16	17	18	19	20	21	
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14	15 3 Month Applicant Response Deadline	16 H	17 H	18 H	19 H	20 H	
21 H	22 H	23 H	24 H	25 H	26 H	27 H	
28 H	29 H	30 H					

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H	H	Reply after Non-final Action				
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18	19	20 Not Final Action	21	22	23	24
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15	16	17 Reply after Non-final Action	18	19	20	21
22	23	24	25	26	27	28
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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25 3-Year PTO Issue Deadline	26 B	27 B	28 B	29 B	30 B
31 B						

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	1 B	2 B	3 B	4 B	5 B	6 B
7 B	8 *Final Rejection B	9 B	10 B	11 B	12 B	13 B
14 B	15 B	16 B	17 B	18 B	19 B	20 B
21 B	22 B	23 B	24 B	25 B	26 B	27 B
28 B						

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	B		B		B	
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B	B		B		B	
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Date: 10/21/2008						
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Case: 08-10005						
Date: 10/21/2008						
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Page: 61/126						
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				B	B	B
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B	B	B	B	B	B	B
18	19	20	21	22	23	24
B	B	B	B	B	B	B
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B	B	B	B	B	B	

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B	B	B	B	B	B	3 Month Applicant Response Deadline	B
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Notice of Appeal	M N	M N	M N	M N	M N	M N	
M N L							
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M N	M N						





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M N	Examiner's Answer M N	M N				

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M N	M N	M N	M N	M N	M N	M N
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	Mon	Tue	Wed	Thu	Fri	Sat	Sun
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NOVEMBER 2008						
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M N	M N	M N	M N	M N	M N	M N
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M N	M N	M N	M N	M N	M N	M N
27	28	29	30	31		
M N	M N	M N	M N	M N		

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3 M N			4 M N		5 M N	6 M N	7 M N	8 M N	9 M N
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17 M N			18 M N		19 M N	20 M N	21 M N	22 M N	23 M N
24 M N			25 M N		26 M N	27 M N	28 M N	29 M N	30 M N

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M N	M N	M N	M N	M N	M N	M N
29	30	31				
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19	20	21	22	23	24	25			
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31							
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AUGUST 2008						
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M N	M N	M N	M N	M N	M N	M N
28	29	30	31			
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4	5	6	7	8	9	10
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OCTOBER 2008						
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23 M N	24 M N	25 M N	26 M N	27 M N	28 M N	29 M N
30 M N	31 M N					

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Docket Number: CV01382K-US						
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25 M N	26 M N	27 M N	28 M N	29 M N	30 M N	31 M N

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21/NOV/2008						
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29 M N	30 M N	31 M N				

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26 M N	27 M N	28 •Final BPAI Decision M N				

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MARSHALL ISLANDS									
NO.	NAME	AGE	SEX	REL.	EDUC.	PROF.	INDUSTRY	REMARKS	DATE
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JUNE 2008						
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11 B	12 B	13 B	14 B	15 B	16 B	17 B
18 B	19 B	20 B	21 B	22 B	23 B	24 B
25 •Notice of Allowance B	26 B	27 B	28 B	29 B	30 B	

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B	B	B	B	B	B	B		B	
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Case No.		Case Name		Case No.		Case Name		Case No.		Case Name		Case No.		Case Name	

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6	B	7	B	8	B	9	B	10	B
11	B	12	B	13	B	14	B	15	B
16	B	17	B	18	B	19	B	20	B
21	B	22	B	23	B	24	B	25	B
26	B	27	B	28	B	29	B	30	B

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26	27	28	29	30					
B	B	B	B	B					



Direct		Indirect		Total		Grand Total	
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21	B	22	B	23	B	24	B
25	B	26	B	27	B	28	B
29	B	30	B	31	B	32	B

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JANUARY 2009						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
	1 B	2 B	3 B	4 B	5 B	6 B
7 B	8 B	9 B	10 B	11 B	12 B	13 B
14 B	15 B	16 B	17 B	18 B	19 B	20 B
21 B	22 B	23 B	24 4 Month PTO Deadline (Issue) B	25 B,R	26 B,R	27 B,R
28 B,R	29 B,R	30 B,R	31 B,R			

JANUARY 2009						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
				1 B,R	2 B,R	3 B,R
4 B,R	5 B,R	6 B,R	7 B,R	8 B,R	9 B,R	10 B,R
11 B,R	12 B,R	13 B,R	14 B,R	15 B,R	16 B,R	17 B,R
18 B,R	19 B,R	20 B,R	21 B,R	22 B,R	23 B,R	24 B,R
25 B,R	26 B,R	27 B,R	28 B,R	29 B,R		

MAR 21 2008						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
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10 B,R	11 B,R	12 B,R	13 B,R	14 B,R	15 B,R	16 B,R
17 B,R	18 B,R	19 B,R	20 B,R	21 B,R	22 B,R	23 B,R
24 B,R	25 B,R	26 B,R	27 B,R	28 B,R	29 B,R	30 B,R
31 B,R						

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B,R	B,R	B,R	B,R	B,R	B,R	B,R
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B,R	B,R	B,R	B,R	B,R	B,R	B,R
28	29	30				
B,R	B,R	B,R				

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	1	2	3	4
	1 B,R	2 B,R	3 B,R	4 B,R
5 B,R	6 B,R	7 B,R	8 B,R	9 B,R
10 B,R	11 B,R	12 B,R	13 B,R	14 B,R
15 B,R	16 B,R	17 B,R	18 B,R	19 B,R
20 B,R	21 B,R	22 B,R	23 B,R	24 B,R
25 B,R	26 B,R	27 B,R	28 B,R	29 B,R
30 B,R	31 B,R			

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B,R	B,R	B,R	B,R	B,R	B,R	B,R	B,R
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B,R	B,R	B,R	B,R	B,R	B,R	B,R	
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B,R	B,R	B,R	B,R	B,R	B,R	B,R	
30							
B,R							

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JULY 2008						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
	1 B,R	2 B,R	3 B,R	4 B,R	5 B,R	6 B,R
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14 B,R	15 B,R	16 B,R	17 B,R	18 B,R	19 B,R	20 B,R
21 B,R	22 B,R	23 B,R	24 B,R	25 B,R	26 B,R	27 B,R
28 B,R	29 B,R	30 B,R	31 B,R			



4 B,R	5 B,R	6 B,R	7 B,R	8 B,R	9 B,R	10 B,R
11 B,R	12 B,R	13 B,R	14 B,R	15 B,R	16 B,R	17 B,R
18 B,R	19 B,R	20 B,R	21 B,R	22 B,R	23 B,R	24 B,R
25 B,R	26 Issue Date B,R	27	28	29	30	31

USPTO REGISTRATION SUMMARY					
Case No.	Applicant Name	Registration Date	Registration Type	Registration Fee	Registration Status
A	Filing Date under 35 USC 111(a) (US National Application)	PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).	First PTO Action: 07/02/2003 Restriction / Election-of-Species		99
B	Filing Date under 35 USC 111(a) (US National Application)	<b>3-Year PTO Issue of Patent</b>  PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b).  You have elected to analyze this rule under the PTO Exclusion Interpretation.  You have elected to not consider the 37 CFR § 1.703(f) Actual Delay limitation in determining Credit Days under this rule.	Issue Date: 08/26/2008 Issue Date		648
C	07/02/2003 Restriction / Election-of-Species	<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 11/21/2003 Response to Election-of-Species / Restriction Filed	50	

II 08/04/2003 Response to Election-of-Species / Restriction Filed	<b>Reply Having Omission</b>  Period of adjustment (credits) shall be reduced where applicant submits a reply having an omission (37 CFR 1.135(c)) for the period beginning on the day after the date the reply having an omission was filed and ending on the day after the reply or other paper correcting the omission was filed. 37 CFR 1.704(c)(7).  The USPTO interprets this rule as not limited to Office actions under 37 CFR 1.135(c), but it applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected. See MPEP 2732 at 2700-20 (8th ed., rev. 2, May 2004).	<i>Reply/Other Paper Correcting Omission:</i> 11/21/2003 Response to Election-of-Species / Restriction Filed	109	
B 10/21/2003 Notice of Informal or Non-Responsive Amendment	<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  You have indicated that no 1.705(c) Showing of Due Care was made.	<i>Applicant Response:</i> 11/21/2003 Response to Election-of-Species / Restriction Filed	0	
I 11/21/2003 Response to Election-of-Species / Restriction Filed	<b>4-Month PTO Response to Applicant Reply</b>  PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).	<i>PTO Response:</i> 03/15/2004 Non-Final Action		0

<p>12/01/2003 Information Disclosure Statement</p>	<p><b>Supplemental Reply or Other Paper (IDS)</b></p> <p>Period of adjustment (credits) shall be reduced where applicant submits a supplemental reply or other paper, not expressly requested by the examiner, after a reply has been filed, for the period beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed. 37 CFR 1.704(c)(8).</p> <p>A paper containing only an IDS in compliance with 37 CFR 1.97 and 1.98 will not generate a reduction if accompanied by a statement that each item in the IDS was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than 30 days prior to the filing of the IDS. This 30 day period is not extendable. 37 CFR 1.704(d).</p> <p>You have indicated that no statement under 37 CFR 1.704(d) was included with this IDS.</p>	<p><i>Initial Reply:</i> 11/21/2003 Response to Election-of-Species/ Restriction Filed</p>	10	
<p>03/15/2004 Non-final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> 07/14/2004 Reply after Non-final Action under 37 CFR 1.111</p>	29	
<p>07/14/2004 Reply after Non-final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2)(3).</p>	<p><i>PTO Response:</i> 10/20/2004 Non-final Action</p>		0

<p>10/20/2004 Non-final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>11/17/2004 Reply after Non-final Action under 37 CFR 1.111</p>		
<p>11/17/2004 Reply after Non-final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(e) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).</p>	<p><i>PTO Response:</i></p> <p>02/08/2005 Final Rejection</p>		0
<p>02/08/2005 Final Rejection</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>	1	
<p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>	<p><b>Exclusion for Appellate Review</b></p> <p>3-Year PTO Issue Requirement does not include the period of appellate review by the BPAI or a Federal court, beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the BPAI. 35 USC 154(b)(1)(B)(ii); 37 CFR 1.702(b)(4), 1.703(b)(4).</p>	<p><i>Responsive Event:</i></p> <p>02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>	661	

<p>05/09/2005 Notice of Appeal to Board of Patent Appeals and Interferences</p>	<p><b>Credit for Successful Appellate Review</b></p> <p>Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145. 35 USC 154(b)(1)(C)(ii); 37 CFR 1.702(e), 1.703(e).</p> <p>You have indicated the patent issued under an appeal decision reversing an adverse determination of patentability.</p>	<p><i>Final Appellate Decision:</i> 02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>		661
<p>06/06/2005 Appeal Brief by Applicant</p>	<p><b>4-Month PTO Response to Appeal Brief</b></p> <p>PTO must respond to an appeal taken under 35 USC 134 not later than 4 months after the date on which the appeal was taken. The period of adjustment (credits) begins on the day after the date that is 4 months after the date an appeal brief in compliance with 37 CFR 41.37 was filed and ending on the date of mailing of any of an examiner's answer under 37 CFR 41.39, an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(4).</p>	<p><i>PTO Response to Appeal Brief:</i> 08/30/2005 Examiner's Answer to Appeal Brief</p>		0
<p>02/28/2007 Final Decision by Board of Patent Appeals and Interferences</p>	<p><b>4-Month PTO Response to Appellate Decision</b></p> <p>PTO must act on an application not later than 4 months after the date of a decision by the BPAI under 35 USC 134 or 135 or a decision by a Federal court under 35 USC 141, 145, or 146 where at least one allowable claim remains in the application. The period of adjustment (credits) begins on the day after the date that is 4 months after the date of the final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145 or 146 and ending on the date of mailing of either an action under 35 USC 132 or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(3), 1.703(a)(5).</p> <p>You have indicated allowable claim(s) remain in the application.</p>	<p><i>PTO Response to Decision:</i> 06/25/2007 Notice of Allowance under 35 USC 151</p>		0
<p>06/25/2007 Notice of Allowance under 35 USC 151</p>	<p><b>3-Month Applicant Response to Notice of Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> 09/24/2007 Issue Fee Payment under 35 USC 151</p>	0	

4-Month PTO Issue of Patent		Issue Date:		215
09/24/2007 Issue Fee Payment under 35 USC 151	PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6).	08/26/2008 Issue Date		
Total Exclusion, Debit, and Credit Days:		661	199	1623
Overlap Days (7):		0	50	215
Net Exclusion, Debit, and Credit Days:		661	149	1408
Patent Term Adjustment Days (8):				1259
<p>(3) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updating the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their judgment and interpretation of applicable legal authority.</p> <p>(4) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 111(a), or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Patent rule. See 35 USC 154(b)(1)(3)(i)-(iii); 37 CFR 1.702(b)(1)-(5), 1.703(b)(1)-(4).</p> <p>(5) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant Delay.</p> <p>(6) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPTO Delay.</p> <p>(7) To the extent credit periods overlap other credit periods, debit periods overlap other debit periods, or exclusion periods overlap other exclusion periods, overlaps are subtracted so that each calendar day generates at most one credit day, one debit day, and one exclusion day.</p> <p>(8) Patent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.</p>				

## **EXHIBIT F**





## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

SCHERING-PLOUGH CORPORATION  
PATENT DEPARTMENT (K-6-1, 1990)  
2000 GALLOPING HILL ROAD  
KENILWORTH NJ 07033-0530

COPY MAILED

JUL 21 2008

In re Application of	:	OFFICE OF PETITIONS
HARRY R. DAVIS	:	
Application No. 10/057,629	:	DECISION ON APPLICATION
Filed: January 25, 2002	:	FOR
Atty Docket No. CV01382K	:	PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed August 30, 2007. Applicant requests correction of the patent term adjustment from 612 days to 921 days partly on the basis of the Office taking in excess of three years to issue the patent.

The request for reconsideration of the patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct patent term adjustment determination at the time of the mailing of the notice of allowance is 611 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within three years. See 37 CFR 1.703(b). It is noted that at the time of this decision the patent has not issued.

Application No. 10/057,629

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Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

On June 25, 2007, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date is 612 days. On August 30, 2007, applicant timely filed the instant request for reconsideration of the patent term adjustment.<sup>1</sup> Applicant directs the Office's attention to the filing of an Information Disclosure Statement (IDS) on May 10, 2005, after the filing of a notice of appeal on May 9, 2005, but before the filing of the appeal brief on June 6, 2005. Specifically, applicant asserts that the patent term adjustment should be reduced by one day for the period from the filing of the notice of appeal until the filing of the IDS in accordance with 37 CFR 1.704(c)(8).

The Office notes that the filing of the IDS on May 10, 2005, after the filing of the notice of appeal and before the filing of the appeal brief (i.e. during the period of perfecting the appeal), is not a circumstance that constitutes a failure to engage in reasonable efforts to conclude prosecution of the application within the meaning of 37 CFR 1.704(c)(8). Accordingly, the filing of the IDS on May 10, 2005, is not a supplemental reply or other paper within the meaning of 37 CFR 1.704(c)(8).

Nevertheless, a review of the application history reveals that the Office incorrectly entered the date of the final decision in favor of applicant by the Board of Patent Appeals and Interferences as March 1, 2007, instead of February 28, 2007. The date of February 28, 2007, and not March 1, 2007, should have been used in calculating patent term adjustment. Thus, the

<sup>1</sup> Office records indicate that the issue fee payment was received on September 24, 2007.

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period of adjustment pursuant to 37 CFR 1.703(e) is 661 days, the number of days beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, May 9, 2005, and ending on the date of a final decision in favor of applicant by the Board of Patent Appeals and Interferences, February 28, 2007.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 611 days (760 days of Office delay - 149 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

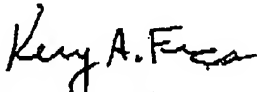
Applicant is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application that overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A) and 37 CFR 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The application is being referred to the Office of Data Management for issuance of the patent.

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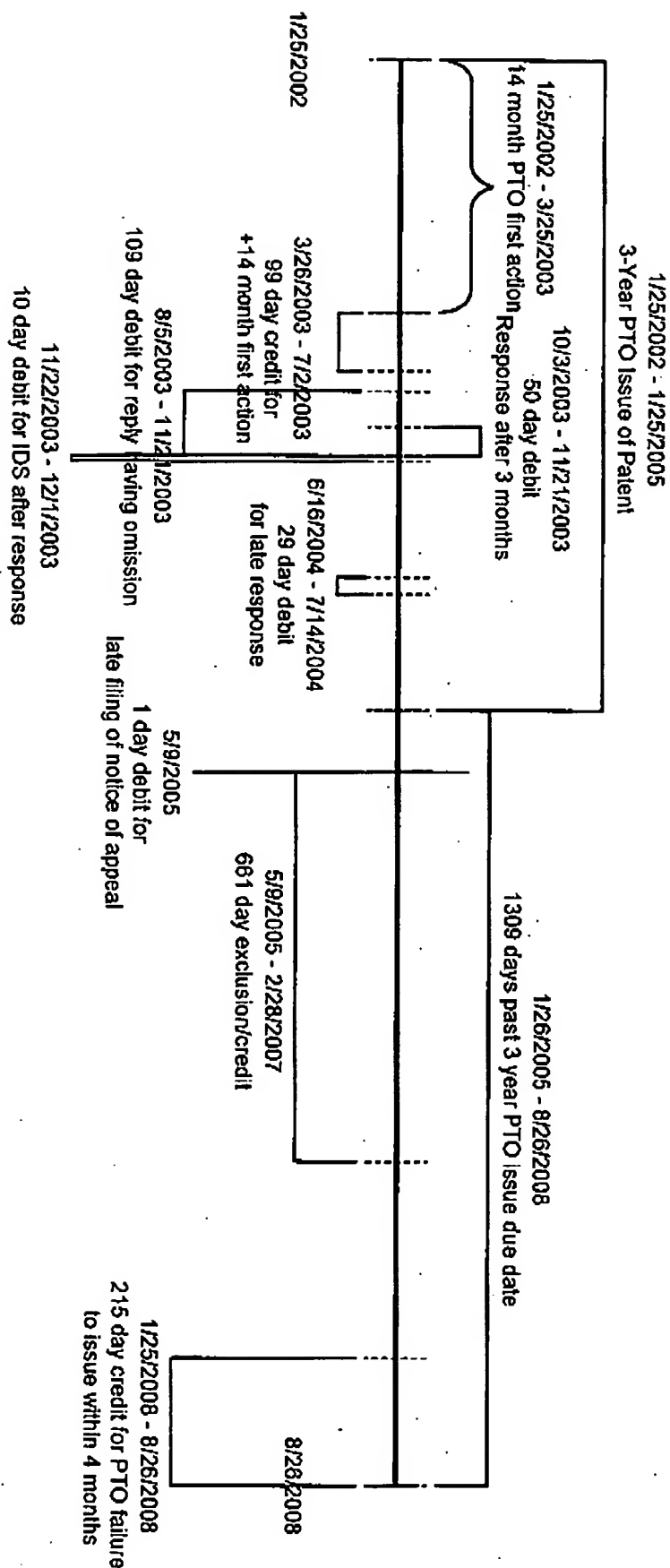
Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen

## **EXHIBIT G**



## **EXHIBIT H**

Case 1:07-cv-01492-JR Document 27 Filed 09/30/2008 Page 1 of 10

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WYETH, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 07-1492 (JR)
	:	
JON W. DUDAS, Under Secretary of	:	
Commerce for Intellectual	:	
Property and Director of U.S.	:	
Patent and Trademark Office,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

Plaintiffs here take issue with the interpretation that the United States Patent and Trademark Office (PTO) has imposed upon 35 U.S.C. § 154, the statute that prescribes patent terms. Section 154(a) (2) establishes a term of 20 years from the day on which a successful patent application is first filed. Because the clock begins to run on this filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate the damage that bureaucracy can do to inventors, the statute grants extensions of patent terms for certain specified kinds of PTO delay, 35 U.S.C. § 154(b) (1) (A), and, regardless of the reason, whenever the patent prosecution takes more than three years. 35 U.S.C. § 154(b) (1) (B). Recognizing that the protection provided by these separate guarantees might overlap, Congress has forbidden double-counting: "To the extent that periods of delay attributable to grounds



specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed." 35 U.S.C.

§ 154(b)(2)(A). Plaintiffs claim that the PTO has misconstrued or misapplied this provision, and that the PTO is denying them a portion of the term Congress has provided for the protection of their intellectual property rights.

#### **Statutory Scheme**

Until 1994, patent terms were 17 years from the date of issuance. See 35 U.S.C. § 154 (1992) ("Every patent shall contain . . . a grant . . . for the term of seventeen years . . . of the right to exclude others from making, using, or selling the invention throughout the United States. . . ."). In 1994, in order to comply with treaty obligations under the General Agreement on Tariffs and Trade (GATT), the statute was amended to provide a 20-year term from the date on which the application is first filed. See Pub. L. No. 103-465, § 532, 108 Stat. 4809, 4984 (1994). In 1999, concerned that extended prosecution delays could deny inventors substantial portions of their effective patent terms under the new regime, Congress enacted the American Inventors Protection Act, a portion of which -- referred to as the Patent Term Guarantee Act of 1999 -- provided for the adjustments that are at issue in this case. Pub. L. No. 106-113, §§ 4401-4402, 113 Stat. 1501, 1501A-557 (1999).

As currently codified, 35 U.S.C. § 154(b) provides three guarantees of patent term, two of which are at issue here. The first is found in subsection (b) (1) (A), the "[g]uarantee of prompt Patent and Trademark Office response." It provides a one-day extension of patent term for every day that issuance of a patent is delayed by a failure of the PTO to comply with various enumerated statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like. See 35 U.S.C. § 154(b) (1) (A) (i)-(iv). Periods of delay that fit under this provision are called "A delays" or "A periods." The second provision is the "[g]uarantee of no more than 3-year application pendency." Under this provision, a one-day term extension is granted for every day greater than three years after the filing date that it takes for the patent to issue, regardless of whether the delay is the fault of the PTO.<sup>1</sup> See 35 U.S.C. § 154(b) (1) (B). The period that begins after the three-year window has closed is referred to as the "B delay" or the "B period". ("C delays," delays resulting from interferences, secrecy orders, and appeals, are similarly treated but were not involved in the patent applications underlying this suit.)

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<sup>1</sup> Certain reasons for exceeding the three-year pendency period are excluded, see 35 U.S.C. § 154(b) (1) (b) (i)-(iii), as are periods attributable to the applicant's own delay. See 35 U.S.C. § 154(b) (2) (C).

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The extensions granted for A, B, and C delays are subject to the following limitation:

(A) In general.--To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

35 U.S.C. § 154(b)(2)(A). This provision is manifestly intended to prevent double-counting of periods of delay, but understanding that intent does not answer the question of what is double-counting and what is not. Proper interpretation of this proscription against windfall extensions requires an assessment of what it means for "periods of delay" to "overlap."

The PTO, pursuant to its power under 35 U.S.C. § 154(b)(3)(A) to "prescribe regulations establishing procedures for the application for and determination of patent term adjustments," has issued final rules and an "explanation" of the rules, setting forth its authoritative construction of the double-counting provision. The rules that the PTO has promulgated essentially parrot the statutory text, see 37 C.F.R. § 1.703(f), and so the real interpretive act is found in something the PTO calls its Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. § 154(b)(2)(A), which was published on June 21, 2004, at 69 Fed. Reg. 34238. Here, the PTO "explained" that:

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the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. § 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. § 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. § 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

69 Fed. Reg. 34238 (2004) (emphasis added). In short, the PTO's view is that any administrative delay under § 154(b)(1)(A) overlaps any 3-year maximum pendency delay under § 154(b)(1)(B): the applicant gets credit for "A delay" or for "B delay," whichever is larger, but never A + B.

In the plaintiffs' submission, this interpretation does not square with the language of the statute. They argue that the "A period" and "B period" overlap only if they occur on the same calendar day or days. Consider this example, proffered by plaintiff: A patent application is filed on 1/1/02. The patent issues on 1/1/08, six years later. In that six-year period are two "A periods," each one year long: (1) the 14-month deadline for first office action is 3/1/03, but the first office action does not occur until 3/1/04, one year late; (2) the 4-month deadline for patent issuance after payment of the issuance fee is

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1/1/07, but the patent does not issue until 1/1/08, another year of delay attributable to the PTO. According to plaintiff, the "B period" begins running on 1/1/05, three years after the patent application was filed, and ends three years later, with the issuance of the patent on 1/1/08. In this example, then, the first "A period" does not overlap the "B period," because it occurs in 2003-04, not in 2005-07. The second "A period," which covers 365 of the same days covered by the "B period," does overlap. Thus, in plaintiff's submission, this patent holder is entitled to four years of adjustment (one year of "A period" delay + three years of "B period" delay). But in the PTO's view, since "the entire period during which the application was pending before the office" is considered to be "B period" for purposes of identifying "overlap," the patent holder gets only three years of adjustment.

#### Chevron Deference

We must first decide whether the PTO's interpretation is entitled to deference under Chevron v. NRDC, 467 U.S. 837 (1984). No, the plaintiffs argue, because, under the Supreme Court's holdings in Gonzales v. Oregon, 546 U.S. 243 (2006), and United States v. Mead Corp., 533 U.S. 218 (2001), Congress has not "delegated authority to the agency generally to make rules carrying the force of law," and in any case the interpretation at issue here was not promulgated pursuant to any such authority.

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See Gonzales, 546 U.S. at 255-56, citing Mead, 533 U.S. at 226-27. Since at least 1996, the Federal Circuit has held that the PTO is not afforded Chevron deference because it does not have the authority to issue substantive rules, only procedural regulations regarding the conduct of proceedings before the agency. See Merck & Co. v. Kessler, 80 F.3d 1543, 1549-50 (Fed. Cir. 1996).

Here, as in Merck, the authority of the PTO is limited to prescribing "regulations establishing procedures for the application for and determination of patent term adjustments under this subsection." 35 U.S.C. § 154(b)(3)(A) (emphasis added). Indeed, a comparison of this rulemaking authority with the authority conferred for a different purpose in the immediately preceding section of the statute makes it clear that the PTO's authority to interpret the overlap provision is quite limited. In 35 U.S.C. § 154(b)(2)(C)(iii) the PTO is given the power to "prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application" (emphasis added) -- that is, the power to elaborate on the meaning of a particular statutory term. No such power is granted under § 154(b)(3)(A). Chevron deference does not apply to the interpretation at issue here.

### Statutory Construction

Chevron would not save the PTO's interpretation, however, because it cannot be reconciled with the plain text of the statute. If the statutory text is not ambiguous enough to permit the construction that the agency urges, that construction fails at Chevron's "step one," without regard to whether it is a reasonable attempt to reach a result that Congress might have intended. See, e.g., MCI v. AT&T, 512 U.S. 218, 229 (1994) ("[A]n agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear.").

The operative question under 35 U.S.C. § 154(b)(2)(A) is whether "periods of delay attributable to grounds specified in paragraph (1) overlap." The only way that periods of time can "overlap" is if they occur on the same day. If an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and § 154(b)(2)(A) does not limit the extension to one day. Recognizing this, the PTO defends its interpretation as essentially running the "period of delay" under subsection (B) from the filing date of the patent application, such that a period of "B delay" always overlaps with any periods of "A delay" for the purposes of applying § 154(b)(2)(A).

The problem with the PTO's construction is that it considers the application delayed under § 154(b)(1)(B) during the

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period before it has been delayed. That construction cannot be squared with the language of § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years." (Emphasis added.) "B delay" begins when the PTO has failed to issue a patent within three years, not before.

The PTO's interpretation appears to be driven by Congress's admonition that any term extension "not exceed the actual number of days the issuance of the patent was delayed," and by the PTO's view that "A delays" during the first three years of an applications' pendency inevitably lead to "B delays" in later years. Thus, as the PTO sees it, if plaintiffs' construction is adopted, one cause of delay will be counted twice: once because the PTO has failed to meet an administrative deadline, and again because that failure has pushed back the entire processing of the application into the "B period." Indeed, in the example set forth above, plaintiffs' calendar-day construction does result in a total effective patent term of 18 years under the (B) guarantee, so that - again from the PTO's viewpoint -- the applicant is not "compensated" for the PTO's administrative delay, he is benefitted by it.

But if subsection (B) had been intended to guarantee a 17-year patent term and no more, it could easily have been written that way. It is true that the legislative context -- as



distinct from the legislative history -- suggests that Congress may have intended to use subsection (B) to guarantee the 17-year term provided before GATT. But it chose to write a "[g]uarantee of no more than 3-year application pendency," 35 U.S.C.

§ 154(b) (1) (B), not merely a guarantee of 17 effective years of patent term, and do so using language separating that guarantee from a different promise of prompt administration in subsection (A). The PTO's efforts to prevent windfall extensions may be reasonable -- they may even be consistent with Congress's intent -- but its interpretation must square with Congress's words. If the outcome commanded by that text is an unintended result, the problem is for Congress to remedy, not the agency.

JAMES ROBERTSON  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WYETH, et al., :  
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 Plaintiffs, :  
 :  
 v. : Civil Action No. 07-1492 (JR)  
 :  
 JON W. DUDAS, Under Secretary of :  
 Commerce for Intellectual :  
 Property and Director of U.S. :  
 Patent and Trademark Office, :  
 :  
 Defendant. :

## ORDER

For the reasons stated in the accompanying memorandum opinion, plaintiffs' motion for summary judgment [12] is **GRANTED** and defendant's motion for summary judgment [16] is **DENIED**. The case is remanded to the agency for further proceedings that are consistent with this opinion.

JAMES ROBERTSON  
United States District Judge